



Cri.W.P. 1548-2016

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1548 OF 2016

Ashok Kondaji Rokade,
Age 53 years, Occu. Labour,
R/o Nagar-Manmad Road,
Laxmi Nagar, Shirdi,
Taluka Rahata,
District Ahmednagar

..Petitioner

Versus

1. The State of Maharashtra,
through Secretary, Home
Department, Mantralaya,
Mumbai
2. Superintendent of Police,
Ahmednagar
3. Superintendent of Police,
CID, Crime Branch, Pune
4. DYSP, Shirdi Police Station,
Shirdi, Tq. Rahata,
District Ahmednagar
5. Police Inspector,
Shirdi Police Station,
Shirdi, Taluka Rahata,
District Ahmednagar
6. Tahsildar,
Rahata, Taluka Rahata,
District Ahmednagar
7. Executive Officer,
C.C.T.V. Control Division,
Saibaba Sansthan, Shirdi,
Taluka Rahata,
District Ahmednagar
8. Sub-Divisional Officer,
Shirdi Division, Shirdi,
Taluka Rahata,
District Ahmednagar
9. Sangita Ramdas Raut,
Age 37 years, Occu. Service,
R/o Sai Plaza Building,
Vitthal Naga,
New Akola By-pass, Sangamner,
Taluka Sangamner,
District Ahmednagar

10. Shaikh Ayyub Babu,
Age 49 years, Occu. Service,
R/o Fatima Housing Society,
Ward No.1, Shrirampur,
Taluka Shrirampur,
District Ahmednagar
11. Shaikh Rajjaq Abdul Behram,
Age major, Occu. Service,
R/o Mukundnagar, Ahmednagar,
Taluka and District Ahmednagar
12. Rajendra Bhagchand Avhad,
Age major, Occu. Service,
R/o Rahata Police Station, Rahata,
Taluka Rahata, Dist. Ahmednagar
13. Harichandar Baburao Mane,
Age major, Occu. Service,
R/o Gulmohar Road, Ahmednagar,
Taluka and District Ahmednagar .. Respondents

Mr S.S. Chapalgaonkar, Advocate for the petitioner
Mr G.O. Wattamwar, A.P.P. for respondents no.1 to 8/State
Mr N.B. Narwade, Advocate for respondent no.11.
Mr A.B. Kharosekar, Advocate for respondent no. 9 - absent
Mr L.K. Pradhan, Advocate for respondent no.10 - absent
Mr D.R. Korade, Advocate for respondent no. 13 - absent

**CORAM : T.V. NALAWADE AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 26th November 2020

ORAL JUDGMENT : (Per Shrikant D. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of both the sides.
2. The petitioner is seeking *ex gratia* compensation to the tune of Rs.10 lakhs on account of custodial death of his son namely Kiran Rokade, coupled with prayer to direct respondent no.1/State to register F.I.R. against the concerned guilty police officials in respect of custodial death of Kiran and add offence under Section 302 of Indian Penal Code in F.I.R. as against added respondent nos. 9 to 13 and further direct respondent no.2/Superintendent of

Police, Ahmednagar to initiate departmental enquiry against the added respondent nos. 9 to 13.

3. The brief facts necessary for adjudication of this petition in brief are as under :

On 31.3.2016, the petitioner came to know from his another son namely Ravindra that Police Officer had taken away his son Kiran to Police Station, Shirdi. The petitioner, his wife and his son rushed to Police Station, Shirdi. Akash (nephew) and his friend Vivek had already reached at Police Station for their personal work. Kiran was sitting on the ground in the Police Station and three to four police officials were making enquiry with Kiran. The petitioner and his wife were standing before the room of P.S.O. The Police Officer did not allow them to meet Kiran and sent them back. After some time, the Police Officer taken one tack covered in the blanket. While putting it in the police vehicle, Kiran was in the tack covered in the blanket. The petitioner and his other family members witnessed that scenario. The Police Officer did not allow to make any enquiry and rushed to Saibaba hospital. The petitioner followed them by motorcycle. The petitioner reached to the hospital and saw that Doctor asked to petitioner to leave the room and after some time, the Doctor disclosed him that Kiran is dead.

4. According to the petitioner, on 31.3.2016 about 11.00 a.m., the temple protection Police Officers namely Mr Rakshe and Mr Pimpale of Shirdi Police Station caught his son Kiran on the suspicion of pick-pocketing. The officials of the Shirdi Police Station namely Hawaldar Rajjaq Shaikh, Naik - Mane, Avhad and other officials alleged to have assaulted brutally and killed Kiran. The petitioner rushed to Police Station, Shirdi for lodging the complaint but Police Officer avoided to register the F.I.R. On 1.4.2016, the petitioner filed complaint to the Superintendent of Police, C.I.D. Crime Branch, Pune about

death of his son Kiran in Police lock up. The petitioner took follow up so as to register the F.I.R. against the Police officials regarding custodial death of his son. So also, requested for post mortem examination. The petitioner also informed to the Medical Director of Saibaba Sansthan, Shirdi on 31.3.2016 that he will not take the custody of his son who died in custody and will not perform funeral ceremony unless post mortem examination and enquiry is conducted. Ravindra Rokade, who happens to be elder son of the petitioner, made representation to the Prima Minister, Governor and other top most Officers to take action on the complaint given by his father on 1.4.2016. After much follow up, the post mortem on the corpse of Kiran was conducted on 1.4.2016 about 12.00 to 2.00 p.m. at Sasoon Hospital, Pune.

5. According to the petitioner, Kiran was only 15 years old and could not have been arrested and kept in the custody. The parents or relatives of Kiran were not informed in respect of his custody. There is no entry in the concerned register. No arrest panchnama was conducted, C.C.T.V. cameras were deliberately switched off and dead body was taken to the hospital and thereafter, the concerned Officer ran away. According to the petitioner, his son Kiran died in police custody/police lock up due to assault of Police Officers. According to the petitioner, Deputy Superintendent of Police Mr Vivek Patil, P.I. Pramod Wagh, Police Naik Mane, Police Avhad and P.S.O. Ayyub Shaikh Rajjaq Shaikh are responsible for custodial death of his son Kiran.

6. The petitioner filed application to the Police Inspector of Shirdi Police Station and requested to provide CCTV footage dated 31.3.2016 from 10.00 a.m. to 3.00 p.m. He also filed an application to the Executive Officer, CCTV Control Division, Saibaba Sansthan and requested for copy of D.P. and CCTV footage.

7. According to the petitioner, as per the report given by the Forensic Medicine Department, B.J. Medical College and Sasoon Hospital, Pune, the probable cause of death is "evidence of abrasion over neck". The final post mortem report also shows same cause of death i.e. "evidence of abrasion over neck and viscera was preserved for histopathological examination". After long persuasion, Crime No. 235/2016 for the offences punishable under Sections 342 and 306 read with Sec.34 of the Indian Penal Code came to be registered on 12.12.2016 at Shirdi Police Station, Taluka Rahata, District Ahmednagar against A.P.I. Smt. Sangita Ramdas Raut, Police Hawaldar B.No.745 - Shaikh Ayyub Babu, A.S.I. Shaikh Rajjaq Abdul Behram, Police Naik B.No. 2132 Rajendra Bhagchand Avhad, Police Naik B.No. 1920 Harischandra Baburao Mane. The investigation was entrusted to Dy. Superintendent of Police, C.I.D. Nashik. It is informed to this Court that the charge-sheet has been filed against the abovesaid Police Officers in respect of custodial death of son of the petitioner.

8. Regarding prayer to add Section 302 of Indian Penal Code in the abovesaid crime against the concerned Police Officers is concerned, this Court has observed under order dated 15.10.2020 that it is always open to the trial Court to ascertain on the basis of material available, as to whether it is a case of homicidal death or suicidal. That job needs to be left with the trial Court. Further, it is observed by this Court under order dated 15.10.2020 that the concerned Police officers who are allegedly responsible for the death of the son of the petitioner are made party respondents. The departmental enquiry seems to have been initiated against the concerned Police officers. We are now concerned about the prayer for *ex gratia* compensation of Rs.10 lakhs claimed by the petitioner on account of death of his son Kiran in police lock up.

9. Heard Mr S.S. Chapalgaonkar, learned Advocate for the petitioner, Mr G.O. Wattamwar, learned A.P.P. for respondents no.1 to 8/State and Mr N.B. Narwade, learned Advocate for respondent no.11. We have gone through the police papers very carefully made available by the learned A.P.P. So also we have perused the medical notification of death issued by the Forensic Medical Department, B.J. Medical College and Sassoon Hospital, Pune and Forensic Laboratory report, Mumbai.

10. The admitted factual aspect needs to be placed on record.

Kiran Rokade (deceased) was caught by disciples of Saibaba on 31.3.2016 about 10.30 a.m. to 11.00 a.m. while allegedly committing theft of purse of one lady disciple. Kiran Rokade was handed over to the police officials namely Naik B.N. 1246 and Yogeshkumar Shankar Patil, who were deployed for Sai temple security, Shirdi. In turn, Police Naik B.No.450 Bandu Vitthal Rakshe and Police Naik B.No. 1118 Bhaskar Dashrath Pimpale brought him to Shirdi Police Station and handed over him to B.No.745 Shaikh Ayyub Babu, who was on duty as a Police Station Officer without making enquiry regarding the age of Kiran Rokade. He was put up in lock up. The intimation was not given either to parents or to the close relatives by the abovesaid police officials. There was no arrest panchnama at the relevant point of time. Police Naik B.No. 2132 Rajendra Bhagchand Avhad was on lock up duty and thereafter charge was with Police Naik B.No. 1920 Harischandra Baburao Mane. Kiran Rokade was kept in police lock up on 31.3.2016 about 2.00 p.m.

11. Having regard to the above factual scenario, it is crystal clear that Kiran Rokade died in police lock up. His death falls in the category of custodial death.

12. We need not require to go into arena whether death of Kiran Rokade is homicidal or suicidal and who are responsible Police officials for such custodial death. The criminal law has been put in motion and charge-sheet has been filed. The trial Court would take care of all these controversial issues involved in the case.

13. The question before us is about *ex gratia* compensation to the petitioner on account of death of his son in police lock up.

14. According to Mr Chapalgaonkar, Kiran was hardly 15 to 16 years old when died in police lock up. It is a case of custodial death at the hands of Police officials. The State is responsible for *ex gratia* compensation. It is a case of violation of Article 21 of the Constitution of India. The petitioner has lost his son Kiran at a very tender age, who could have helped him for long years to go. He submitted that by taking into consideration the age of the deceased and family background and the status of the petitioner, an amount of Rs.10 lakhs may be awarded to the petitioner as *ex gratia* compensation.

15. On the other hand, Mr Wattamwar, learned A.P.P submitted that as per the police investigation, it is a case of suicidal death of Kiran Rokade. The police officials are not responsible for such unfortunate death. The Respondent/State is not liable to pay any compensation.

16. The learned Counsel for respondent no. 11 echoed the argument advanced by the learned A.P.P. and submitted in the same tone that they are not liable for unfortunate death of Kiran Rokade. No liability may be fastened on the shoulders of respondent no. 11 much less for compensation.

17. The Apex Court in case of **D.K. Basu Vs. State of West Bengal and ors.**, reported in **(1997) 1 SCC 416** has laid down the procedure for arrest and further course of action. The guidelines laid down by the Apex Court in case of **D.K. Basu Vs. State of West Bengal and ors.** (supra) seems to have been completely violated by the concerned Police Station Officer and the police officials sub-ordinate to him. No enquiry was conducted about the age of Kiran Rokade, whether he was juvenile and straightway put up him in the lock up which unfortunately resulted into his custodial death.

18. Freedom of personal liberty is restricted by arrest and detention. Articles 21 and 22 of the Constitution of India are there to recognize liberty as fundamental right and to give safeguards for protection of that right. For the present purpose, Articles 21, 22 (1) and 22 (2) of the Constitution of India are relevant and they are reproduced below :

"21. Protection of life and personal liberty - No person shall be deprived of his life or personal liberty except according to procedure established by law.

22. Protection against arrest and detention in certain cases - (1) No person who is arrested shall be detailed in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

19. Article 21 of the Constitution of India speaks that the procedure established by law needs to be followed strictly by Police effecting arrest and detaining a person. Article 22(1) and 22(2) of the Constitution of India give safeguards against arbitrary arrest and detention and while making law, the limitations and conditions put by Article 22 need to be kept in mind.

20. The provisions of Sections 41, 51 and 54 of Cr.P.C. need to be considered together. Section 41 gives the procedure to arrest the person without warrant for the purpose of investigation of an offence provided the conditions mentioned in Section 41 are satisfied. Section 41-B of Cr.P.C. relates to the precautions, which need to be taken during the procedure of arrest. The provision shows that it is mandatory to prepare memorandum of arrest, which shall be attested atleast by one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made. The arrest memo needs to be countersigned by the person arrested. The provision also shows that if such memorandum is not attested by a member of family of accused then it needs to be informed to the accused that he has right to have a relative or a friend named by him to be informed of his arrest.

21. According to Section 54 of Cr.P.C., when any person is arrested, he shall be examined by a Medical Officer and in case the Medical Officer is not available, by a registered Medical Practitioner soon after the arrest. No such medical examination seems to have been conducted in this case, as contemplated under Section 54 of the Cr.P.C.

22. According to Section 41 (D) of Cr.P.C., when a person is arrested and interrogated by the Police, the said person shall be entitled to meet an advocate of his choice during interrogation, though not throughout

interrogation. In the case at hand, the Shirdi Police officials who were on duty at relevant point of time completely overlooked the provisions of Section 41 (D) of Cr.P.C.

23. The custodial violence is always been a matter of great concern for all civilized societies. There must be great degree of sensibility amongst the police officials who are in authority with regard to the persons, who are arrested and kept in custody. It would be helpful to refer certain observations made by the Apex Court in the case of **D.K. Basu Vs. State of West Bengal and ors.**, (supra) in paragraph 54 which read as under :

"54. Thus, to sum up, it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty-bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will,

or course, depend upon the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

24. Now turning back to the facts of the case at hand, Late Kiran Rokade was about 16 years of age. He met with unfortunate death in the Police lock up, which termed as custodial death. While assessing *ex gratia* amount to be awarded to the petitioner on account of custodial death of his son, we need to take help of decision of Apex Court in case of **Sarla Verma (Smt.) and ors., Vs. Delhi Transport Corporation and anr.**, reported in **(2009) SCC 121**. Even though it is a decision under Motor Vehicles Act and compensation thereunder, the multiplier applied therein with notional income per year needs to be considered as a guiding factor. Having regard to the age of the deceased and his notional income per year, we calculate the amount of compensation as under :

<u>Age</u>	<u>Multiplier</u>	<u>Income per year</u>	<u>Total amount</u>
16 years	16	Rs.30,000/-	Rs.4,80,000/-
			Loss of love and affection as Rs.20,000/-
		Total ..	Rs.5,00,000/-

Thus, the total amount of *ex gratia* compensation comes to Rs.5 lakhs.

25. Having regard to the above reasons and discussion, we arrived at conclusion that it is a case of custodial death at the hands of police officials of Shirdi Police Station. The prayer for *ex gratia* compensation of Rs.5 lakhs needs to be granted to unfortunate father/petitioner. In light of the above, we proceed to pass the following order :

- ORDER -

(I) Criminal Writ Petition is allowed to the extent of prayer clause (B) in which compensation is claimed. Respondent no.1/State shall deposit initially *ex gratia* compensation of Rs.5,00,000/- (Rs. Five lakhs) in the Court.

(II) Respondent no.1/State shall deposit the amount within a period of 45 days from the date of this order in the Court. If the amount is not deposited within a period of 45 days, it will carry interest @ 8% per annum.

(III) After depositing the said amount in the Court, the amount shall be handed over equally to the parents of the deceased.

(IV) The State shall be at liberty to recover the amount of compensation of Rs.5 lakhs from the erring police officials concerned as and when the liability for the crime in question is fastened.

26. Rule is made absolute in above terms.

27. Other prayers can be considered by the trial Court.

(SHRIKANT D. KULKARNI, J.)

(T.V. NALAWADE, J.)

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